

**SECOND FRANK
MOTION**

**COMES UP ON
FRIDAY**

Motion to Set Aside
Verdict of

Guilty Will Be Heard
by

Judge Hill

The hearing of the motion to set aside the verdict of guilty against Leo M. Frank on the ground that he was not present in the Court room when it was rendered, will begin before Judge Ben H. Hill at 10 o'clock Friday morning. This is expected to be the last fight for Frank in the superior Court of Fulton County.

It is understood the Solicitor will demur to the motion. The demurrer, if it is filed, must be argued and decided before anything further can be done. If it is sustained, the Case will be thrown out of Court. If not, the hearing will proceed.

Should the motion be denied by Judge Hill, it will be appealed to the Supreme Court of the State, leaving two motions before that tribunal, as the extraordinary motion on the ground of new evidence, which was denied a short time ago by Judge Hill and subsequently appealed, has not yet been decided.

The hearing of the motion to set aside has been repeatedly postponed, but it is now understood that both sides are ready, and that Judge Hill will brook no further delay in the Case. It is considered likely that the hearing of the motion will be concluded by Saturday evening.

The principal fight will be on the law, although the Solicitor General, Hugh Dorsey, will also make an issue of fact.

“FAVORED WAIVER.”

The motion contends that Frank did not know that his presence was to be waived.

The Solicitor will dispute this allegation and will attempt by the introduction of Affidavits to show that Frank not only knew that his presence was to be waived but that he consented to and favored the waiver.

However, the motion to set aside makes the point that the law requires the defendant's presence, and that neither he nor his attorneys have a legal right to waive it.

As a result of the Court's construction of the law will be the most important phase of the Case, regardless of the facts shown by the Affidavits, which will be introduced both by the defense and the State.

The motion claims that Frank's rights under the federal constitution were violated by the superior Court's allowing a

rendition of the verdict in his absence. On this claim, in the event both superior and Supreme Courts deny the motion, an effort will be made to get the Case into the United States Court.

PLANNING HIS FIGHT.

Solicitor Dorsey is planning his fight on the motion with this phase of the Case in view, and he will contend that there is no federal issue.

The work of securing Affidavits to complete the State's fight on the facts involved had been practically completed and Thursday Dorsey and his assistants denied themselves to callers and spent the day studying the law points in the motion.

It was said the State's answer would be finished some time Thursday afternoon. This will set forth the complete fight of the State. A copy of the answer will be delivered to the attorneys filing the motion.

Among the Affidavits secured by the

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State is one from Judge L.S. Roan, the trial Judge, and much of the Case will hinge on his affidavit.

Judge Hill has Stated that he may admit oral testimony on the motion, and it is likely that Attorneys Luther Z. Rosser and Reuben R. Arnold, who represented Frank at the trial, will be called upon to testify. They took no part in the filing of the motion to set aside, which was brought into Court by Attorneys John L. Tye, Henry Peeples, Herbert J., and Leonard Haas, and Harry A. Alexander.
